IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Paresh Shah, M.D. and Paresh Shah, M.D., P.A.,	)	Civil Action No. 3:06-cv-2283-CMC
Plaintiffs,	)	
vs.	)	
Palmetto Health Alliance d/b/a Palmetto Richland Memorial Hospital f/k/a Richland Memorial Hospital;	)	
Kester S. Freeman, Jr.;	)	
Charles D. Beaman, Jr.;	)	
Greta Harper, M.D.;	)	
David Keisler, M.D.;	)	
N. John Stewart, Jr., M.D.;	)	**DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTION TO REMAND**
Karen Hart;	)	
Ellis "Mac" Knight, M.D.;	)	
J. Kevin Baugh, M.D.;	)	
C. Osborne Shuler, M.D.;	)	
Eva Jane Rawl, M.D.;	)	
Stephen C. Stanfield, M.D.;	)	
Clay Nichols, M.D.;	)	
Jim Lloyd, M.D.;	)	
Catherine Miller, M.D.;	)	
Michael Ervin, M.D.;	)	
Lester L. Bates, Jr.;	)	
Troy B. Gamble, Jr., M.D.;	)	
William L. Cogdill, Jr.;	)	
Jasper Salmond;	)	
Calvin H. Elam;	)	
William I. Freeman;	)	
Lynn M. Williams;	)	
Sara B. Fisher;	)	
Robert Dye, Jr.;	)	
Lester P. Branham, Jr.;	)	
Charles H. Dickerson;	)	
Beverly D. Brandes;	)	
James H. Herlong, M.D.;	)	
James C. Reynolds, M.D.;	)	
Lynette L. Allston;	)	
Charles Gatch;	)	
Gordon M. Langston, M.D.;	)	

Benjamin R. Jones, M.D.;)
Jamaluddin Moloo, M.D.;)
Nasir Waheed, M.D.;)
William A. Newman, M.D.;)
Vijaya Korrapati, M.D.;)
Linda M. Christmann, M.D.;)
William T. Felmly, M.D.;)
Scott Thompson, M.D.;)
Edward Catalano, M.D.;)
Timothy D. Malone, M.D.;)
Jennifer M. Risinger, M.D.;)
Neal P. Christansen, M.D.;)
Michael S. Stinson, M.D.;)
P. Prithvi Reddy, M.D.;)
John E. Buerkert, M.D.;)
Frank O. Pusey, M.D.;)
James M. Nottingham, M.D.;)
Charles F. L. Shipley, M.D.; and)
James I. Raymond, M.D.,)
)
Defendants.)
______________________________________)

The defendants submit this memorandum of law in opposition to plaintiffs' motion to remand.

INTRODUCTION

Plaintiffs, Paresh Shah, M.D. ("Shah") and Paresh Shah, M.D., P.A. ("P.A."), (collectively "plaintiffs"), seek recovery of damages allegedly arising out of a series of peer review and credentialing decisions at Palmetto Health Alliance's Palmetto Health Richland Hospital in Columbia, South Carolina (the "Hospital" or "PRMH").[1] On July 13, 2006, plaintiffs filed a Complaint seeking to recover actual and punitive damages from all defendants based upon causes of action for civil compensatory contempt, violation of due process pursuant to the Fifth and Fourteenth Amendments of the U.S. Constitution, tortious interference with contractual rights,

[1] The defendant, Palmetto Health Alliance, is a private, non-profit 501(c)(3) organization which operates a hospital under the name Palmetto Health Richland. *Shah v. Richland Memorial Hospital*, 350 S.C. 139, 564 S.E.2d 681 (Ct. App. 2002). That facility is referenced in the Amended Complaint as "PRMH," and therefore the same reference to the facility is used herein.

intentional infliction of emotional distress, and civil conspiracy. Plaintiffs also brought a cause of action for defamation against defendant David Keisler, M.D. ("Keisler"), for breach of contract against defendant Palmetto Health Alliance ("PHA"), as the manager and operator of the Hospital, and negligence against the Board of Directors of PHA ("Board"). On September 22, 2006, after defendants filed a motion to dismiss and plaintiffs filed a motion to remand, plaintiffs filed an Amended Complaint that dropped the federal due process claim and added a breach of contract claim against PRMH. Because plaintiffs alleged a due process claim arising under the Fifth and Fourteenth Amendments of the U.S. Constitution in their initial Complaint, federal question jurisdiction exists in this case pursuant to 28 U.S.C. § 1331.

Additionally, the Health Care Quality Improvement Act, 42 U.S.C. § 11101 *et seq.* (the "HCQIA") requires that plaintiffs prove that defendants' professional review action violated that federal statute before plaintiffs can recover on any of their state-law claims. Accordingly, plaintiffs' state-law claims necessarily involve substantial federal issues that confer federal jurisdiction pursuant to 28 U.S.C. § 1331.

Alternatively, even if the HCQIA does not establish subject matter jurisdiction, the Court maintains supplemental jurisdiction pursuant to 28 U.S.C. § 1367 based on plaintiffs' federal due process claim in the Complaint. Based on the clear federal policy set forth in the HCQIA, the Court should exercise federal jurisdiction over plaintiffs' state-law claims. See 42 U.S.C. § 11101.

BACKGROUND

This case represents Dr. Shah's latest effort to shift the focus from the multitude of patient and staff complaints that resulted in the termination of his privileges at PRMH. It is not surprising that Dr. Shah prefers to focus now on the peer review process rather than the voluminous and alarming record of his unprofessional, incompetent, and dangerous conduct.

However, despite plaintiffs' assertions to the contrary, Dr. Shah's peer review has been conducted in a deliberate, judicious, and nondiscriminatory manner.

In a typical memorandum opposing a motion to remand, a recitation of the facts would not be necessary because it would be clear from the pleadings that federal question jurisdiction exists. However, because plaintiffs have filed a 392 paragraph Complaint, followed by a 416 paragraph Amended Complaint, which obfuscates the issues and unnecessarily drags over 50 medical professionals into this action, a brief factual summary is presented below.

The history that gave rise to this case began more than ten years ago when Dr. Shah filed a lawsuit ("underlying lawsuit") against the Hospital alleging claims related to his daily rotation schedule and his quality assurance review. On November 28, 2001, Dr. Shah and the Hospital entered into a Confidential Consent Order of Settlement ("Consent Order") approved by the Honorable William P. Keesley ("Judge Keesley") whereby Dr. Shah's quality assurance reviews would be performed by an independent, outside, third-party reviewer, rather than by radiologists credentialed in the Hospital's Department of Radiology. Subsequently, Judge Keesley entered a Supplemental Order dated January 7, 2003 ("Supplemental Order")(collectively "State Court Orders") that outlined the quality assurance review process for Dr. Shah, and denied Dr. Shah's motion to reconsider the Supplemental Order.[2]

Dr. Shah and PRMH ultimately agreed that Dr. Bayne Selby ("Dr. Selby") of the Medical University of South Carolina in Charleston would serve as the independent, outside reviewer for Dr. Shah's cases. Over the following three and a half years, PRMH conducted a painstakingly detailed peer review process for Dr. Shah that complied with the State Court Orders, the Hospital's Medical/Dental Staff Bylaws, Rules and Regulations ("Bylaws"), and federal and state law. The deliberate process consisted of the following: reviews of Dr. Shah's patient records (selected for outside peer review) by Dr. Selby, the mutually-agreed upon independent reviewer; a hearing before the Medical Executive Committee in 2004 in which Dr. Shah had an opportunity to appear; an appeal of that decision to the 2004 Fair Hearing Committee; a hearing before the 2004 Fair Hearing Committee conducted in four evening sessions in which Dr. Shah had an opportunity to present evidence and cross-examine Hospital witnesses; an appeal of the 2004 Fair Hearing Committee decision to the PHA Board; a second meeting of the MEC in 2005; a second appeal to a new 2005 Hearing Committee; a second series of hearings before the 2005 Hearing Committee that took place over three evenings; a second appeal to the PHA Board; and at least two hearings before Judge Keesley.

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[2] Attached as Exhibit 1 to this memorandum is a copy of Judge Keesley's Supplemental Order.

The plaintiffs would have this Court believe that "[t]his lawsuit principally involves alleged breaches of those South Carolina State court orders." Plaintiffs' Remand Memo, p. 3. A simple review of the caption to this lawsuit reveals that this is not true. If the State Court Orders were the true focus, plaintiffs would have only named, as defendants, the two parties that were named as defendants in the underlying lawsuit: PHA[3] and Kester P. Freeman. Rather, plaintiffs named over fifty individuals who participated in some portion of Dr. Shah's quality assurance review, many who were not even at PRMH during the underlying lawsuit, and fifty of whom were not parties to the State Court Orders.[4] Furthermore, plaintiffs filed three petitions for rule to show cause,[5] related to the Hospital's compliance with the State Court Orders, which remain pending before Judge Keesley. Rather than pursuing any alleged non-compliance with the State Court Orders, pursuant to the rules to show cause, plaintiffs filed this lawsuit asserting eight causes of action individually against any person remotely involved in Dr. Shah's quality assurance review.

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[3] The legal obligations of Richland Memorial Hospital under the orders were assigned to and expressly assumed by PHA in 1997 when PHA assumed operational responsibility for PRMH. *See, Shah v. Richland Memorial Hospital, supra*.

[4] The caption of the Amended Complaint lists 52 defendants, 51 of whom are individuals. However, only 49 individuals are mentioned in the body of the Amended Complaint. Linda Christmann, M.D., is still listed in the caption but identified nowhere in the Amended Complaint.

The greater issue presented by this lawsuit is the applicability of the HCQIA. Congress enacted the HCQIA to address the concern that doctors were refusing to identify their incompetent and unprofessional colleagues for fear of threatened litigation. That fear resulted in doctors refusing to conduct meaningful peer review, which allowed for continued abuse by bad doctors. The HCQIA does not create a private cause of action but it has an immunity provision that impacts the very core of plaintiffs' claims in this case. This Court should not allow Dr. Shah to intimidate the doctors who engaged in his peer review by naming each of them, individually, in this lawsuit. Federal jurisdiction is appropriate based on the significant federal issues presented by the HCQIA.

ARGUMENT

I. THIS COURT HAS FEDERAL QUESTION JURISDICTION OVER PLAINTIFFS' CLAIMS.

The presence or absence of federal-question jurisdiction is governed by the "'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here, plaintiffs' initial Complaint clearly alleged defendants failed to provide plaintiffs with due process of law in violation of the Fifth and

[5] The three petitions for rule to show cause were filed by plaintiffs on September 19, 2005, December 19, 2005, and April 13, 2006.

Fourteenth amendments of the U.S. Constitution. Additionally, plaintiffs acknowledge in the Complaint and Amended Complaint their burden to defeat the presumption of immunity under the HCQIA in order to bring their state claims against defendants. Therefore, federal question jurisdiction exists and plaintiffs' motion to remand should be denied.

A. Plaintiffs' Due Process Claim Creates Federal Question Jurisdiction.

Federal question jurisdiction exists under 28 U.S.C. § 1331, which provides that the "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In determining whether federal question jurisdiction exists, the well-pleaded complaint rule dictates that courts should "ordinarily . . . look no farther than the plaintiff's [properly pleaded] complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331." *Custer v. Sweeney*, 89 F.3d 1156, 1165 (4th Cir. 1996). Moreover, "when evaluating the propriety of removal, the district court must determine the nature of plaintiff's claims from the face of the complaint at the time the petition for removal was filed." *Burbage v. Richburg*, 417 F. Supp. 2d 746, 749 (D.S.C. 2006) (quoting *Martin v. Lagualt*, 315 F. Supp. 2d 811, 814 (E.D. Va. 2002)). A federal court has discretion to maintain federal jurisdiction over an action involving substantial issues of federal law even after a complaint is amended to eliminate federal claims. *Harless v. CSX Hotels, Inc.*, 389 F.3d 444, 448 (4th Cir. 2004). See also *Brown v. Eastern States Corp.*, 181 F.2d 26, 28 (4th Cir. 1950)(amendment of Complaint after removal does not defeat federal jurisdiction). Therefore, if a claim included within the plaintiffs' well-pleaded complaint is "founded on a claim or right arising under the Constitution, treaties, or laws of the United States," it is removable. 28 U.S.C. § 1441(b). Furthermore, if any of the claims asserted by the plaintiffs "arise under" the laws of the United States, the federal courts also have supplemental jurisdiction over any other claims which are part of the "same case or controversy" as the federal claim. 28 U.S.C. § 1367(a).

At the time the defendants filed the petition for removal, Dr. Shah had alleged a due process claim arising exclusively under the Constitution of the United States. The original Complaint alleged, "Dr. Shah was guaranteed the right of due process of law before losing his property rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution. His privileges at PRMH were a property right of both Plaintiffs." Complaint ¶ 339. Ultimately, after filing a motion to remand, Dr. Shah switched course and filed an Amended Complaint omitting any reference to his federal due process claim.[6] Although Dr. Shah has dismissed his federal due process claim, the Court has discretion to determine whether or not to retain, remand, or dismiss the supplemental state-law claims. *Farlow v. Wachovia Bank of N.C.*, 259 F.3d 309 (4th Cir. 2001). The Fourth Circuit long ago held that a plaintiff cannot deprive a court of federal jurisdiction by amending the complaint. *Brown v. Eastern States, supra.* Defendants concede that it is often preferable to remand if the federal claim is eliminated soon after removal. *Id.* However, Dr. Shah's federal due process claim is not the only ground for removal. As discussed in detail below, Dr. Shah's right to relief necessarily depends on resolution of a substantial question of federal law, *i.e.*, whether Dr. Shah can overcome the presumption that the HCQIA provides immunity for all claims alleged in the Amended Complaint. Regardless, the Court should exercise supplemental jurisdiction over the state-law claims based on the federal policy interests expressed by Congress in promulgating the HCQIA.

B. Because of The HCQIA, All of Plaintiffs' State-Law Claims Necessarily Involve Questions of Federal Law.

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[6] Defendants agree that Dr. Shah's federal due process claim lacked merit and was subject to dismissal. See Defendants' Memorandum in Support of the Motion to Dismiss.

Under the unique burden-shifting framework of HCQIA, plaintiffs must prove the inapplicability of the HCQIA, codified at 42 U.S.C. § 11101 *et seq.*, prior to judicial determination of plaintiffs' substantive claims for breach of contract, tortious interference with contractual rights, defamation and slander per se, intentional infliction of emotional distress, civil conspiracy, and negligence, all of which are based on alleged actions of the defendants during a professional review action. Recognizing their burden, plaintiffs explicitly include allegations in their complaint intended to counter the rebuttable presumption of immunity that HCQIA provides the defendants. Defendants' professional review actions at issue in this case are immune from suit under both state and federal law. HCQIA is prominently featured on the face of the Complaint and Amended Complaint and it presents a substantial federal question that is inextricably intertwined with the majority of plaintiffs' state-law claims.

1. The majority of plaintiffs' state-law claims arise under the HCQIA.

Under 28 U.S.C. § 1441(b), "[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties." Cases may arise under federal law in either of two ways. First, and most commonly, a defendant is entitled to remove an action if the plaintiff could have brought a federal claim in federal district court originally. As the United State Supreme Court recently noted in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, "[t]here is, however, another longstanding, if less frequently encountered, variety of federal 'arising under' jurisdiction, this Court having recognized for nearly 100 years that in certain cases federal question jurisdiction will lie over state-law claims that implicate significant federal issues." 545 U.S. 308, 312 (2005) (*citing Hopkins v. Walker*, 244 U.S. 486, 490-491 (1917)). *See also Smith v. Kansas City Title &*

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Trust Co., 255 U.S. 180, 199 (1921) (holding a state-law claim can give rise to federal question jurisdiction so long as it "appears from the [complaint] that the right to relief depends upon the construction or application of [federal law].").

Since the early twentieth century, the Supreme Court has tightened and refined the situations in which state-law claims gave rise to federal question jurisdiction. However, the Court did not issue a test for federal jurisdiction over state-law claims requiring interpretation of substantial questions of federal law until *Grable*: "[t]he question is, does a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." 545 U.S. 308, 314.

As in *Grable*, "[t]his case warrants federal jurisdiction." *Id.* Aside from plaintiffs' due process claim which clearly arose under the federal Constitution, plaintiffs have premised their state-law claims for tortious interference with contractual rights, intentional infliction of emotional distress, defamation, civil conspiracy and negligence on the defendants' alleged failure to conduct their professional peer review action in accordance with the HCQIA requirements. See e.g. Complaint ¶¶ 262-288; Amended Complaint ¶¶ 269-296. Whether Dr. Shah's professional review action satisfies the federal statute is thus an essential element of plaintiffs' state-law claims and the meaning and interpretation of the HCQIA is actually in dispute.

Applying the *Grable* analysis, the meaning of the HCQIA "is an important issue of federal law that sensibly belongs in a federal court." *Id.* at 315. The federal government has a strong interest in the accuracy of professional review actions as evidenced by the Congressional findings:

> The Congress finds the following:
>
> **(1)** The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater

> efforts than those that can be undertaken by any individual State.
>
> **(2)** There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.
>
> **(3)** This nationwide problem can be remedied through effective professional peer review.
>
> **(4)** The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.
>
> **(5)** There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

42 U.S.C. § 11101. To remedy these problems, Congress, through the HCQIA, established a national reporting system that made information about adverse professional review actions against physicians more widely available. Moreover, recognizing that the threat of private money damage liability under state and federal laws unreasonably discourages physicians from participating in effective professional peer review, Congress also provided immunity from damages for individuals participating in peer review proceedings so long as certain standards are met. 42 U.S.C. §§ 11111, 11112.

Congress believed that both the national reporting system and the grant of peer review immunity were crucial to effect the necessary reform. The HCQIA's reporting system "'would virtually end the ability of incompetent doctors to skip from one jurisdiction to another.'" *Freilich v. Board of Directors of Upper Chesapeake Health, Inc.*, 142 F. Supp. 2d 679, 695 (D. Md. 2001) (*citing* H.R. Rep. No. 99-903, 99th Cong., 2d Sess. (1986), *reprinted in* 1986 U.S.C.C.A.N. 6384, 6385). Moreover, "Congress felt that the peer review immunity in the statute would make the reporting system workable, concluding that without it, peer reviewers 'sufficiently fearful of the threat of litigation will simply not do meaningful peer review.'" 142 F. Supp. 2d at 695. In fact, the federal nature of the peer review immunity was believed to be of particular importance to the success of the HCQIA:

> Indeed, Congress was aware of the fact that most states already had in place statutes providing immunity to peer review activities, and concluded that, because the reporting requirements might increase the amount of litigation, and because some federal anti-trust actions had been used to 'override those [state] protections,' peer immunity was a necessary part of the statute.

Id. at 696 (*citing* H.R. Rep. No. 99-903, 99th Cong., 2d Sess. (1986), *reprinted in* 1986 U.S.C.C.A.N. 6384, 6391). Therefore, Congress enacted the HCQIA to "facilitate the frank exchange of information among professionals conducting peer review inquiries without the fear of reprisals in civil lawsuits. The statute attempts to balance the chilling effect of litigation on peer review with concerns for protecting physicians improperly subjected to disciplinary action . . . ." *Bryan v. James E. Holmes Regional Med. Ctr.*, 33 F.3d 1318, 1322 (11th Cir. 1994)(footnote omitted).

Given the great importance Congress has placed on the HCQIA and its immunity provision, the federal government has an interest in having available a federal forum to support its efforts. Just as importantly, participants in professional review actions will undoubtedly "find it valuable to come before judges used to" interpreting federal statutes like the HCQIA. *Grable*, 545 U.S. at 308, 315.

Finally, allowing federal question jurisdiction for these claims under the HCQIA will not disturb the balance of responsibility between the federal and state courts. Disciplined physicians are afforded several stages of investigation, hearings and appeals on the local level. Those few health professionals with valid claims not subject to the HCQIA immunity will not have a substantial impact on the federal-state division of labor. The immunity provision gives federal courts the ability to quickly dispense with invalid claims. *Bryan v. James E. Holmes Regional Med. Center*, 33 F.3d at 1332 ("[The Committee intends that] 'these provisions allow defendants to file motions to resolve the issue of immunity in as expeditious a manner as possible.'") (quoting H.R. Rep. No. 903, 99th Cong., 2d Sess. 12, *reprinted in* 1986 U.S.C.C.A.N. 6394).

Therefore, this case meets the Supreme Court's test in *Grable*. Plaintiffs' state-law claims give rise to federal question jurisdiction because plaintiffs' claims for breach of contract based on PRMH Bylaws, tortious interference with contractual rights, intentional infliction of emotion distress, defamation, and negligence all depend on plaintiffs being able to refute the presumption of immunity granted to all defendants by the HCQIA. In fact, the instant case is the very type of action that the HCQIA was intended to prevent or at least bring to a swift conclusion. For example, plaintiffs continuously allege that the defendants "maliciously" considered evidence during the peer review that Dr. Shah would undoubtedly have preferred was excluded. In paragraphs 91 through 96 of the Complaint (Amended Complaint ¶¶ 92-96), plaintiffs allege that defendants "maliciously" considered five different patient cases in an attempt to assess Dr. Shah's treatment of his patients. HCQIA specifically protects this type of investigation during a peer review proceeding:

> Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

42 U.S.C.A. § 11111(a)(2). Noticeably, plaintiffs do not allege that any of the information considered by the MEC, the MEC Hearing Committee, or the PHA Board of Directors was false and known to be false by those participating in the professional review. Dr. Shah's complaint is that the information was **considered at all**.

The HCQIA was specifically intended and designed to protect patients and to limit the ability of physicians to hold hostage those physicians and board members willing to fulfill their duty to protect patient care. Plaintiffs have brought this action to do exactly what Congress, in enacting the HCQIA, intended to prevent. Accordingly, since plaintiffs' state-law claims arise under a substantial question of federal law, removal is appropriate in this case and plaintiffs' motion to remand should be denied.

2. The HCQIA need not create a private cause of action to create federal question jurisdiction.

Plaintiffs allege that "jurisdictions that have decided whether the HCQIA creates federal question jurisdiction has [sic] uniformly held that the Act does not afford such right." Plaintiffs' Remand Memo, p. 7. However, the cases cited by plaintiffs are irrelevant to whether federal question jurisdiction exists for this case. Plaintiffs apparently have confused the existence of a private right of action with questions "arising under" federal law. All of the cases plaintiffs cite in their memorandum, with the exception of two unreported district court cases, hold that no cause of action for physicians was created by the HCQIA.[7] Defendants agree that HCQIA does

[7] *Doe v. United States Dep't of Health & Human Servs.*, 871 F. Supp. 808 (E.D. Pa. 1994) (the HCQIA does not create a cause of action); *Goldsmith v. Harding Hospital, Inc.*, 762 F. Supp. 187, 190 (S.D. Ohio 1991) ("HCQIA creates no cause of action for the benefit of physicians to enforce its provisions."); *Shelton v. Schneider*, 2005 WL 3601934 (N.D. Ill. 2005) ("plaintiff's claims arising out of the HCQIA cannot proceed" because the statute does not create a private cause of action); *Caine v. Hardy*, 715 F. Supp. 166, 170 (S.D. Miss. 1989) (HCQIA "intended to establish certain criteria by which to determine whether procedural safeguards adopted for peer review of health professionals are sufficient to cloak the individuals acting pursuant to those procedures with the immunity provided by the Act" – not to "provide a disciplined physician with a private cause of action."); *Wayne v. Genesis Medical Center*, 140 F.3d 1145, 1148 (8th Cir. 1998) ("HCQIA does not explicitly or implicitly afford aggrieved physicians a cause of action when a hospital fails to follow the HCQIA's prescribed peer review procedures"); *Hancock v. Blue Cross-Blue Shield*, 21 F.3d 373, 374 (10th Cir. 1994) ("'Congress did not intend to create a cause of action for the benefit of physicians to enforce provisions of the HCQIA.'"); *Simpkins v. Shalala*, 999 F. Supp. 106, 116 (D.D.C. 1998) ("no private cause of action should be implied under the HCQI Act."); *Held v. Decatur Memorial Hospital*, 16 F. Supp. 2d 975 (C.D.

not create a private cause of action. However, as discussed above, a private right of action is not necessary for federal question jurisdiction to exist.

Only two of the cases cited by plaintiffs address removal based upon the HCQIA. In *Zamanian v. Christian Health Ministry*, 1994 WL 396179 (E.D. La. 1994), the court determined that the HCQIA did not create federal question jurisdiction under the doctrine of complete preemption. The doctrine of complete preemption is not at issue here. In *Janes v. Centegra Health System*, 1996 WL 210018 *6 (N.D. Ill. 1996), the court held that "[a]n interpretation of the HCQIA was not required for the court to decide" issues regarding plaintiff's termination from a hospital that did not stem from a peer review proceeding. Neither of these cases considered or addressed the presumption of immunity the HCQIA provides. Neither case involved a complaint that recognized that the plaintiff bore the burden of proof to show that defendants failed to follow the requirements of the HCQIA in order to recover for any of plaintiffs' state-law claims. Both cases were decided by federal district courts, in unpublished opinions, almost ten years prior to the *Grable* decision discussed in detail above. Therefore, *Zamanian* and *Janes*, like the cases plaintiffs cite for there being no private cause of action under the HCQIA, are of little value to this issue.

Furthermore, federal law is clear that the lack of a federal right of action to enforce a claim does not bar the exercise of federal jurisdiction. *Grable*, 545 U.S. at 318 (the absence of a federal cause of action is "evidence relevant to, but not dispositive of, the 'sensitive judgments about congressional intent,' that § 1331 requires"). *See also Ormet Corp. v. Ohio Power Co.*, 98 F.3d 799, 806 (4th Cir. 1996) (finding that federal question jurisdiction over a state-law claim does not require a federal private right of action). Rather, a state-law claim can give rise to

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Ill. 1998) (no subject matter jurisdiction because the HCQIA does not grant physicians a private right of action).

federal question jurisdiction so long as the state-law claim involves a disputed issue of substantial federal law that a federal court can determine without disturbing the division of labor between the state and federal courts. *Id.*; *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 810 (1986). Since, as discussed above, this case satisfies the requirements for a state-law claim arising under a substantial question of federal law, this case warrants federal question jurisdiction and plaintiffs' motion to remand should be denied.

3. Removal of this action is supported by the well-pleaded complaint rule.

Plaintiffs incorrectly assert that defendants removed this action in violation of the well-pleaded complaint rule. Plaintiffs' Remand Memo, p. 8. Contrary to plaintiffs' claims, removal is appropriate in this case because the HCQIA places the burden of proof on the plaintiffs and does not simply provide defendants an additional defense under federal law. Defendants are, of course, aware that "[i]n determining whether there is original or removal jurisdiction on the basis that the action is a suit 'arising under,' the general rule is that the federal question must appear in the complaint well pleaded." 1A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 0.103[3.-1] (2d ed. 1996).

Under the well-pleaded complaint rule, "§ 1331 federal question jurisdiction is limited to actions in which the plaintiff's well-pleaded complaint raises an issue of federal law; actions in which defendants merely claim a substantive federal defense to a state-law claim do not raise a federal question." *In re Blackwater Security Consulting, LLC*, 460 F.3d 576, 584 (4th Cir. 2006). However, in this case defendants do not merely have a federal defense to plaintiffs' state-law claims – the HCQIA actually provides an additional federal requirement that plaintiffs must satisfy in order to recover any damages for their claims for breach of PRMH Bylaws, tortious interference with contractual rights, defamation and slander per se, intentional infliction of emotional distress, civil conspiracy, and negligence.

Plaintiffs admit they mention the HCQIA nineteen times in their Complaint because "Dr. Shah's failure to anticipate [the HCQIA] defense could result in a failure to state a claim." Plaintiffs' Remand Memo, p. 9. However, plaintiffs' reference to HCQIA simply as a "defense" is misleading. The HCQIA provides that "professional review bodies," and their members and staff, taking "professional review actions" "shall not be liable in damages" under either state or federal law so long as the peer review action satisfies the requirements of 42 U.S.C. § 11112(a). The HCQIA defines a "professional review action" as one that is "based on the competence or professional conduct of an individual physician" and "affects . . . adversely" the physician's clinical privileges. 42 U.S.C. § 11151(9). The review actions alleged in the Complaint and Amended Complaint indisputably meet this definition. Section 11112(a) contains a rebuttable presumption that Dr. Shah's professional review actions have met the standards contained in 42 U.S.C. § 11112(a). *Gabaldoni v. Washington County Hospital Ass'n*, 250 F.3d 255 (4th Cir. 2001); *Imperial v. Suburban Hospital Ass'n*, 37 F.3d 1026, 1030 (4th Cir. 1994); *Wieters v. Roper Hospital Ass'n*, 58 Fed. Appx. 40, 2003 WL 550327 at *45 (4th Cir. 2003). Therefore, the HCQIA shifts the burden to the plaintiffs to show that Dr. Shah's professional review did not meet the Section 11112(a) requirements. *Gabaldoni*, 250 F.3d at 260.

Plaintiffs know that they must establish that Dr. Shaw's professional review action failed to meet HCQIA's requirements in order to recover any damages for any of plaintiffs' claims arising out of the professional review. Plaintiffs' failure to satisfy this requirement necessarily defeats plaintiffs' claims. Plaintiffs' Remand Memo, p. 9. Plaintiffs' references to the HCQIA are not simply "an attempt to anticipate and refute a likely asserted defense of the Defendants."

Plaintiffs' Remand Memo, p. 9. Whether or not defendants raise the HCQIA as a defense, federal law requires plaintiffs prove, as a prerequisite to recovering damages, that Dr. Shah's professional review action violated the requirements of 42 U.S.C. § 11112(a).

The well-pleaded complaint rule does not allow plaintiffs to circumvent defendants' right to have this action – which depends upon the interpretation of a substantial federal issue – heard and decided in federal court. To be sure, plaintiffs have raised state-law claims in addition to their original due process claim. However, as plaintiffs acknowledge in their memorandum, they must prove the inapplicability of HCQIA immunity to recover damages. Plaintiffs clearly recognize this dual burden in their Complaint and Amended Complaint and their attempt to re-characterize their allegations as the anticipation of an expected defense must fail. If plaintiffs must allege that defendants violated the requirements of 42 U.S.C. § 11112(a) in order to state a valid claim, they cannot then reasonably assert that these same allegations are not part of the well-pleaded complaint. Accordingly, plaintiffs' motion for remand must be denied.

4. Plaintiffs' claim that their action principally involves defendants' alleged breach of prior court orders is disingenuous and irrelevant.

In their memorandum of law in support of their motion to remand, plaintiffs repeatedly attempt to re-characterize their complaint as primarily a contempt proceeding. Plaintiffs' Remand Memo, p. 3 ("This lawsuit principally involves alleged breaches of those South Carolina State court orders") and p. 8 ("the heart of Dr. Shah's allegations against the Hospital concerns a breach of a previous state court order designed to protect him from such abuses."). Plaintiffs' assertions are patently untrue and ultimately irrelevant to their motion to remand.

First, only two of plaintiffs' eight causes of action rely upon earlier state court orders. Plaintiffs' three hundred and ninety-paragraph Complaint and four hundred and sixteen-paragraph Amended Complaint are dedicated to plaintiffs' repeated assertions that Dr. Shah was improperly denied privileges at PRMH. However, only the claims for civil compensatory contempt and breach of contract rely upon Judge Keesley's State Court Orders. Should plaintiffs wish to voluntarily dismiss their actions for breach of the PRMH Bylaws, tortious interference with contractual rights, defamation and slander per se, intentional infliction of emotional distress, civil conspiracy, and negligence, defendants will certainly support their decision. However, plaintiffs cannot ignore the existence of these other claims for the purposes of remanding their case to state court.

Second, only two of the fifty-two named defendants in this action were parties to the State Court Orders. Only PHA and Kester Freeman were defendants in the case resulting in the State Court Orders from Judge Keesley. The other fifty defendants were not parties to the underlying lawsuit and are not covered by the State Court Orders in dispute. While plaintiffs' claims against these fifty defendants may not be the "principal" claims in this suit, these defendants are certainly entitled to have the federal claims brought against them heard in federal court.

Third, plaintiffs admit the Judge Keesley has retained jurisdiction of the disputed State Court Orders and that requests for review are pending before Judge Keesley in the Richland County Court. Complaint ¶ 292, Amended Complaint ¶ 300. Accordingly, as discussed in detail in Defendants' motion to dismiss and accompanying memorandum, plaintiffs' claims for civil compensatory contempt and breach of contract, based upon the prior settlement agreement, should be dismissed.

Finally, plaintiffs' claims that their Complaint is primarily concerned with the alleged violations of Judge Keesley's orders are not relevant to the issue of subject matter jurisdiction in federal court. As plaintiffs acknowledge, "[t]he plaintiff is the master of the claim, and he or she may avoid federal jurisdiction by exclusive reliance on state law." Plaintiffs' Remand Memo, p. 8.

(citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)). However, plaintiffs in this action chose to allege a cause of action for violation of due process, specifically based on the federal Constitution, and several state-law claims requiring that plaintiffs rebut a presumption that all defendants are protected by immunity under a federal statute. Having made their choice to bring claims arising under federal law, plaintiffs' attempts in their motion to remand to re-characterize those claims are necessarily unsuccessful. "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties . . . ." 28 U.S.C. § 1441(b). Therefore, plaintiffs' motion to remand should be denied.

C. Supplemental Jurisdiction is Proper and Warranted.

Even if the Court should find that the HCQIA does not implicate significant federal issues, the Court has supplemental jurisdiction to hear plaintiffs' state-law claims based on the federal due process claim alleged in the initial Complaint. When any of the claims asserted by the plaintiff at the time of removal "arise under" the laws of the United States, the federal courts also have supplemental jurisdiction over any other claims which are part of the "same case or controversy" as the federal claim. 28 U.S.C. § 1367(a). Specifically, 28 U.S.C. § 1367 provides that:

> in any civil action of which the district courts have original jurisdiction, the district courts **shall have** supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

Id. (emphasis added). Moreover, when evaluating the propriety of removal, "the district court must determine the nature of plaintiff's claims from the face of the complaint at the time the petition for removal was filed." *Burbage v. Richburg*, 417 F. Supp. 2d 746, 749 (D.S.C. 2006)(quoting

Martin v. Laguait, 315 F. Supp. 2d 811, 814 (E.D. Va. 2002)). *Accord, Brown v. Eastern States, supra.* It is uncontested that plaintiffs alleged a due process claim pursuant to the U.S. Constitution in the initial Complaint. Accordingly, as federal jurisdiction existed at the time the defendants filed the petition for removal, this Court has supplemental jurisdiction over all other related claims.

The supplemental jurisdiction statute directs that a federal court "shall have" jurisdiction unless one of the exceptions of subsection (c) applies. See 28 U.S.C. § 1367. Section 1367(c) provides that, in determining whether to exercise supplemental jurisdiction, district courts should consider the following factors: (1) whether the state claims raise complex or novel issues of state law, (2) whether state claims substantially predominate over the claims for which the court has original jurisdiction, (3) whether the court has dismissed all claims over which it has original jurisdiction, and (4) whether there are other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c). When the exercise of discretion includes the additional issue of whether to remand the case to state court, a district court should also consider "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995)(citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988)). This is a "doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values." *Cohill*, 484 U.S. at 350.

Plaintiffs urge the court to "decline to exercise federal question jurisdiction and supplemental jurisdiction over pendant [sic] claims because this action raises novel or complex issues of state law, the state-law claims substantially predominate over any claims which the District Court might have original jurisdiction, and because compelling reasons of comity and federalism exists for declining jurisdiction." (Plaintiffs' Remand Memo, p. 11). Plaintiffs' request itself implicitly recognizes that federal jurisdiction exists in this matter. That is, for supplemental jurisdiction to exist there must be at least one claim over which the district court does have original jurisdiction, meaning independent federal subject matter jurisdiction. *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546 (2005). As this Court has original jurisdiction based on the federal due process claim alleged in the initial Complaint and independently based on the HCQIA, there is no question that the Court has supplemental jurisdiction over the claims recited in plaintiffs' Amended Complaint. Furthermore, Section 1367(c) provides the district court with no authority to decline to exercise original jurisdiction over a proper federal claim on the ground that there are pendent state claims over which supplemental jurisdiction should not be exercised under any of the four statutory grounds. *Hunter by Conyer v. Estate of Baecher*, 905 F. Supp. 341, 345 (E.D. Va. 1995) (declining supplemental jurisdiction cannot divest district court of its original jurisdiction properly invoked through the removal of an originally state-court filed claim.).

1. All of plaintiffs' claims are part of the same case or controversy.

Without question, all the claims in this action form part of the same case or controversy. In fact, plaintiffs spend the first 309 paragraphs of the Complaint, and the first 317 paragraphs of the Amended Complaint, stating the alleged facts that comprise the same case or controversy for each of the eight causes of action that follow. The individual causes of action include few additional or separate facts that distinguish them from the facts alleged in general. By their own words, plaintiffs concede that "much of [the] Complaint is dedicated to factually pleading the bases of the underlying lawsuits," (Plaintiffs' Remand Memo, p. 11), and the "lawsuit principally involves alleged breaches of those South Carolina State court orders." (Plaintiffs' Remand Memo, p. 3). Therefore, it is readily apparent from the face of plaintiffs' Complaint and

Amended Complaint that the same facts are alleged and are applicable to all eight causes of action.

2. Novel and complex issues of federal law predominate over state-law claims.

The court should reject plaintiffs' argument that this case somehow involves a "novel or complex issue of state law" or that the state claims substantially predominate over the federal claims in this case. A closer examination reveals that novel and complex issues of federal law, as set forth in the HCQIA, predominate over the state-law claims. The HCQIA presumes that defendants are immune from plaintiffs' state-law claims. Plaintiffs have the burden to disprove applicability of the HCQIA prior to this Court considering any of the state-law claims. The HCQIA creates a necessary and essential element that plaintiffs must meet in this action or immunity will be presumed for all defendants. Accordingly, plaintiffs' assertion that this action involves a novel or complex issue of state law must be analyzed in the context of the HCQIA.

This is precisely the type of case contemplated by Congress when it enacted the HCQIA and afforded immunity to defendants. Plaintiffs' attempts to characterize this lawsuit as one primarily focused on civil compensatory contempt which "substantially predominates over any federal issue which this case might present" is misleading and disingenuous. If plaintiffs truly believed this matter involved civil contempt, surely their attorneys would have focused their claims on the two defendants subject to the underlying State Court Orders. Instead, plaintiffs' Complaint and Amended Complaint can only be viewed for what they are: a scattershot blast at over fifty physicians, Board members, and Hospital staff aimed at harassing those involved in Dr. Shah's peer review process, in direct contravention of the intent of the HCQIA, while seeking to avoid focus on the real issue of Dr. Shah's incompetent performance as a physician. Plaintiffs' remand memorandum attempts to shift the focus of the Court's attention away from the fundamental issue before it – the application of the HCQIA – and asks the Court to ignore its responsibilities under well-established jurisprudence. The four corners of the Complaint clearly provide for federal jurisdiction under § 1331 through Dr. Shah's Constitutional due process claim alleged in his initial Complaint and through the application of HCQIA.

In sum, plaintiffs cannot establish that the state-law claims are more technically or intellectually involved, complex or novel than the federal claims or that those claims are more essential to the relief plaintiffs seek. Indeed, the HCQIA predominates over all plaintiffs' claims and Congress' clear expression as to federal policy and the interest in uniformity of protection for physicians, Hospital Board members and staff engaged in peer review mandates federal jurisdiction in this case.

3. In the absence of the federal due process claim, federal jurisdiction is appropriate because the HCQIA leaves state and federal issues intertwined.

Plaintiffs filed the Motion and Memorandum of Law in Support on September 12, 2006. Ten days later, after receiving Defendants' Motion to Dismiss, plaintiffs filed an Amended Complaint that omitted any reference to the federal due process claim that was alleged in the Complaint. While defendants concur that plaintiffs' due process claim lacks merit, plaintiffs' decision to dismiss that cause of action does not defeat federal jurisdiction in this case. *Brown v. Eastern States, supra*. It is well-settled that district courts enjoy wide latitude when deciding whether to exercise supplemental jurisdiction over state claims after the federal claims have been dismissed.[8] *See Shanaghan v. Cahill*, 58 F.3d 106 (4th Cir. 1995); *Jordahl v. Democratic Party*,

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[8] Defendants acknowledge that some courts have found it to be preferable to remand cases if the federal question is eliminated soon after removal. *See e.g. Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988); *Pvd Plast Mould Indus. v. Polymer Group, Inc.*, 2001 U.S. Dist. LEXIS 23804 (D.S.C. Feb. 1, 2001)(Remand Memo, pp.10-11). However, that line of cases arises when the sole basis for federal jurisdiction drops out soon after removal. The substantial federal law and policy interest established by the HCQIA distinguishes this case from that line of jurisprudence.

122 F.3d 192 (4th Cir. 1997). The Fourth Circuit has emphasized that supplemental jurisdiction is a flexible doctrine that allows courts to deal with cases in a sensible, practical manner while keeping in mind federal policy, comity, and considerations of judicial economy. *Shanaghan*, 58 F.3d at 106.

In a factually and procedurally similar case to the case at bar, the Fourth Circuit reviewed and affirmed the decision by the district court to maintain federal jurisdiction over state claims based on the federal issues presented in the HCQIA. In *Wieters v. Roper Hosp., Inc.*, 58 Fed. Appx. 40 (4th Cir. 2003), a doctor sued a hospital alleging state-law claims and federal constitutional claims. When the hospital removed the case to federal court, the doctor voluntarily dismissed his federal claims. The district court exercised its discretion to retain jurisdiction over the state-law claims because "the hospital asserted a defense under the HCQIA, leaving state and federal issues intertwined." *Id.* at 43. The district court granted summary judgment to the hospital based on immunity grounds under the HCQIA. The doctor appealed and the Fourth Circuit affirmed. In this case, as discussed in detail above, the HCQIA implicates significant federal issues such that federal jurisdiction is proper as the court held in *Wieters*.

4. Federal policy, comity, and judicial economy strongly support federal jurisdiction.

Considerations of federal policy weigh heavily in favor of federal jurisdiction in this case. The United States House of Representatives Energy and Commerce Committee, the committee primarily responsible for drafting the HCQIA, reported as follows:

> This bill is needed to deal with one important aspect of the medical malpractice problem in this country – incompetent and unprofessional physicians. . . . The bill's focus is on those instances in which physicians injure patients through incompetent or unprofessional service, are identified as incompetent or unprofessional by their medical colleagues, but are dealt with in a way that allows them to continue to injure patients.
>
> Unfortunately, groups such as state licensing boards, hospitals and medical societies that should be weeding out incompetent or unprofessional doctors often

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> do not do so. Even when such bodies do act against bad physicians, these physicians find it all too easy to move to different hospitals or states and continue their practices in these new locations.

(H.R. Rep. No. 903, 99th Cong., 2d Sess., (1986), reprinted in 1986 U.S.C.C.A.N. 6384-85.) In the final legislation, Congress explicitly set forth the substantial federal interest of improving patient care in our nation's hospitals and ensuring that peer review is uniformly encouraged and protected. 28 U.S.C. § 11101.

As Congress recognized, incompetent, damaging, and unprofessional doctors have been a nationwide problem. The federal policy that Congress established to address this national problem far outweighs any considerations of comity or federalism arising out of Dr. Shah's claim for civil compensatory contempt.

In the Memorandum of Law in Support of the Motion to Remand, Dr. Shah contends that this Court should decline to exercise jurisdiction in this case because the "first and primary" cause of action is one of civil compensatory contempt. This argument presents the plaintiffs' most recent effort to shift the Court's focus in this case. Plaintiffs claim that the "essence of Dr. Shah's action involves numerous violations of a South Carolina State Court Order, agreed to and consented to between both Dr. Shah and the Hospital. . . . Therefore, clearly the state law claim for breach of a court order substantially predominates over any federal issue which this case might present." Plaintiffs' Remand Memo, p. 11. The Court should view plaintiffs' argument with great skepticism. Again, if the "essence" of Plaintiffs' claim were to enforce an order entered into between Dr. Shah and PHA, then why have Plaintiffs sued all fifty-two defendants for civil compensatory contempt, fifty of whom were not parties to the State Court Orders. The essence of plaintiffs' claims is clear: one of harassment of defendants involved in Dr. Shah's peer review process, in direct contravention of the intent of the HCQIA, while seeking to avoid focus on the real issue of Dr. Shah's incompetent performance as a physician.

6. The state court action does not warrant abstention.

Prior to filing this action, plaintiffs filed three petitions for a rule to show cause before Judge Keesley that raised many of the same issues alleged here. Those petitions remain pending before Judge Keesley. Plaintiffs suggest that this Court should decline to exercise federal jurisdiction because "[t]o deny Dr. Shah and the South Carolina Court of Common Pleas this right [to adjudicate any claims arising out of the State Court Orders] would disrespect the province and authority of the South Carolina Courts." Plaintiffs' Remand Memo, p.14. Plaintiffs' assertions are not supported by the law. The exercise of federal jurisdiction is proper based on the substantial federal issues set forth in the HCQIA and pursuant to the doctrine of supplemental jurisdiction.

As well-established jurisprudence provides, "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *Colorado River Water Conservation. Dist. v. United States*, 424 U.S. 800, 813 (1976). The Fourth Circuit has likewise stated, "[a]s has been reiterated time and again, the federal courts have a 'virtually unflagging obligation . . . to exercise the jurisdiction given them.'" *Gannett Co. v. Clark Construction Group, Inc.*, 286 F.3d 737, 741 (4th Cir. 2002) (quoting *Colorado River*); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996).

For a federal court to abstain under the *Colorado River* doctrine, two conditions must be satisfied. As a threshold requirement, there must be parallel proceedings in state and federal court, and "exceptional circumstances" warranting abstention must exist. *Colorado River,* 424 U.S. at 813. And although federal courts may abstain out of deference to the paramount interests of another sovereign, where concerned with principles of comity and federalism, *Quackenbush,* 517 U.S. at 723, the Supreme Court has made clear that the presence of state law and the adequacy of state proceedings can be used only in "rare circumstances" to justify the *Colorado River* abstention. *See Moses H. Cone Memorial Hosp. v. Mercury Construction Corp.*, 460 U.S. 1, 26 (1983) and *Gannett*, 286 F.3d at 746. Instead, these factors typically are designed to justify retention of jurisdiction where an important federal right is implicated and state proceedings may be inadequate to protect the federal right or where retention of jurisdiction would create "needless friction" with important state policies. *Gannett*, 286 F.3d at 746. That state law is implicated in this action "do[es] not weigh in favor of abstention, particularly since both parties may find an adequate remedy in either state or federal court." *Id*. at 747.

This case fails to present the exceptional circumstances such that abstention would be appropriate. Rather, federal law and federal policy predominates through the HCQIA and supplemental jurisdiction. Accordingly, plaintiffs' motion to remand should be denied.

CONCLUSION

For the foregoing reasons, defendants respectfully requests that this Court deny plaintiffs' motion to remand and exercise its federal jurisdiction over this matter.

Respectfully submitted,

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